

# **Overview of Revised Senate and House Ethics Complaint Process**

## **Independent Ethics Commission Established**

### **Membership**

- Establishes a Senate Independent Ethics Commission and a House Independent Ethics Commission, each consisting of:
  - three retired Utah judges, appointed by the mutual consent of:
    - the President of the Senate and the Senate Minority Leader, for the Senate Independent Ethics Commission;
    - the Speaker of the House and the House Minority Leader, for the House Independent Ethics Commission;
  - one former Utah legislator, appointed by President of the Senate or the Speaker of the House, for the Senate or House commission, respectively; and
  - one former Utah legislator, appointed by the Senate Minority Leader or the House Minority Leader, for the Senate or House commission, respectively.
- Each member serves a four year term (except that, upon establishment, the initial term of two members shall be two years to allow for staggered membership).
- The commission members designate a commission chair on an annual basis.
- Each independent ethics commission shall have a separate, dedicated staff, to be hired by the Senate, for the senate commission, and by the House, for the house commission.

### **Requirements for Members**

- Each member must be a registered voter.
- No member may, during his or her term of membership, be a holder of public office, an agency head, a lobbyist, or a principal (an individual who hires a lobbyist).
- No more than two of the former judges may be members of the same political party.
- Former legislators may not have served within the last four years.

### **Accountability of Members**

- Members may resign from the commission.
- Members shall be removed from the commission if they:
  - fail to meet membership requirements;
  - are convicted of a felony or a crime of moral turpitude; or
  - plead guilty, plead no contest, or enter a plea in abeyance for a crime of moral turpitude.
- Members accused of wrongdoing in an ethics complaint, who are cited as a source of information or a witness in an ethics complaint, or that otherwise have a conflict of interest in relation to an ethics complaint shall be temporarily recused from the commission and shall be replaced by a temporary member in relation to that ethics complaint.
- No member may serve more than two consecutive terms as chair.

### **Powers of Independent Ethics Commissions & Ethics Committees**

- The Independent Ethics Commissions and the Ethics Committees are authorized to review ethics complaints as provided in the "Ethic Complaint Process" section below.

- A subpoena to require the appearance of witnesses, the production of documents, or both, may be issued in relation to reviewing an ethics complaint by:
  - the chair of an Independent Ethics Commission or an Ethics Committee;
  - a vote of a majority of the members of an Independent Ethics Commission or an Ethics Committee; or
  - the director of the Office of Legislative Research and General Counsel, if directed by one of the above.
- An Independent Ethics Commission or an Ethics Committee may hold a person in contempt for failure to comply with a subpoena or for failure to answer a permitted question, and may seek enforcement of the contempt finding through the court system.

## **Ethics Complaint Process**

### **Ethics Violations**

- A legislator is subject to an ethics complaint for:
  - violating a provision of the Code of Official Conduct;
  - conviction of a crime involving moral turpitude; or
  - entering a plea of guilty, a plea of no contest, or a plea in abeyance to a crime involving moral turpitude.
- Alleged violations of the Code of Conduct that are founded upon an alleged criminal violation shall be held without action until the respondent is convicted of, or enters a plea of guilty, a plea of no contest, or a plea in abeyance to the criminal violation.

### **Filing Process**

- An ethics complaint against a legislator may be filed by:
  - one or more members of the House of Representatives, for a complaint against a Representative;
  - one or more members of the Senate, for a complaint against a Senator; or
  - one or more registered voters currently residing in the district of the legislator.
- Complaints, during the initial review, are private records and are not to be publicly disclosed by any person.
- Complaints may not be filed in the 90 day period before a regular primary election or a regular general election in which the accused legislator is a candidate.
- Complaints shall be filed with the chair of the Ethics Committee for:
  - the Senate, if the respondent is a Senator; or
  - the House of Representatives, if the respondent is a Representative.
- Complaints shall be in writing and must contain:
  - the name and title of the legislator accused of an ethics violation;
  - the name, address, and telephone number of each person filing the complaint;
  - a description of each alleged violation, including for each:
    - a reference to the code of conduct or criminal provision allegedly violated; and
    - the facts and circumstances supporting the allegation as shown by:

- reference to official records or other documentary evidence; or
- one or more signed, sworn statements (that are subject to penalties of perjury), by an individual or individuals with first-hand knowledge of the facts or circumstances;
- a list of the witnesses that the complainants desire to have called by the independent ethics commission, including for each witness, the witness' name, address, and telephone number, and a brief summary of the testimony to be provided by the witness, and/or a specific description of the documents complainants desire the witness to produce;
- a sworn statement that the complainant or complainants believe the complaint to be true and accurate; and
- the signature of each complainant.

### **Privacy of Ethics Complaints**

- The screening of an ethics complaint by the Independent Ethics Commission is to be private.
- A person who discloses the existence of, or information contained in, an ethics complaint or response (unless the complaint or response is made public because a review by the independent commission recommends that the complaint be made public and reviewed by the ethics committee) is subject to contempt of the Legislature and enforcement of the contempt order through the courts.
- If the existence of an ethics complaint is disclosed during the period that the independent ethics commission is reviewing the complaint, the complaint will be summarily dismissed.

## **Initial Screening by Independent Ethics Commission**

### **Review of complaint for sufficiency -- Scheduling of Hearing -- Response**

- Within five business days of filing, each ethics complaint shall be reviewed by the Ethics Commission chair and staff to confirm that the complaint:
  - meets the technical filing requirements; and
  - alleges violations that are eligible for review under the ethics complaint process.
- Complaints not meeting filing or jurisdictional requirements shall be returned to the first named complainant for correction and re-filing. Any complaint that is re-filed must independently meet filing requirements at the time it is re-filed.
- If the complaint complies with the filing requirements:
  - the complaint shall, within three working days, be forwarded to the chair of the respective Senate or House Independent Ethics Commission; and
  - the Ethics Committee chair shall give notice to the first named complainant that the complaint meets the filing and jurisdictional requirements and has been forwarded to the Independent Ethics Commission.
- The chair of the Independent Ethics Commission shall promptly forward the complaint to each commission member and, by mail that provides verification of receipt or personal service, to the respondent.

- Respondent is provided up to 30 days from the date of receipt of the complaint to file a written response to the complaint, which must contain:
  - for each violation alleged in the complaint:
    - any affirmative defense to the allegation;
    - the facts and circumstances refuting the allegation as shown by:
      - reference to official records or other documentary evidence; or
      - one or more signed, sworn statements (that are subject to penalties of perjury), by an individual or individuals with first-hand knowledge of the facts or circumstances;
  - a list of the witnesses that the respondent desires to have called by the independent ethics commission, including for each witness, the witnesses' name, address, and telephone number, and a brief summary of the testimony to be provided by the witness and/or the documents respondent desires the witness to produce;
  - a sworn statement that the respondent believes the response to be true and accurate; and
  - the signature of the respondent.
- The response is filed with the independent ethics commission and forwarded to each member of the commission and to the first complainant listed on the complaint.
- A hearing date shall be set to review the complaint within 60 days of the determination of sufficiency.
  - The hearing may be continued or postponed in order to accommodate necessary scheduling requirements.
- Commission members are not allowed to communicate with the complainants, the respondent, or their counsel outside of formal hearings or correspondence that is provided to the commission as a whole.

#### **Hearing Before the Independent Ethics Commission -- Procedures**

- Before holding an evidentiary hearing, the commission may, upon the decision of the commission chair (subject to override by a majority of the commission members) or a vote of the majority of the commission members, hear and schedule motions and arguments for summary dismissal of the complaint, limitations or rulings on evidence or procedures, or other motions.
  - The evidentiary hearing may be continued or postponed in order to accommodate any such motions or arguments as determined by a majority vote of the commission.
- Complainants shall bear the cost of their own attorney's fees.
- Respondents shall bear the cost of their own attorney's fees, except that the House of Representatives or the Senate, respectively, shall reimburse the reasonable attorney's fees of a legislator if:
  - the Independent Ethics Commission declines to recommend any allegations for review by the Ethics Commission; or
  - the Ethics Commission elects to dismiss all allegations recommended for review by the Independent Ethics Commission.
- The commission may review only those allegations contained in the complaint.
- The hearing is not a public meeting and its testimony and proceedings are private records.

- It is presumed that the commission will issue subpoenas for all witnesses specified in the complaint and in the response.
  - However, the commission, by a majority vote, may choose not to subpoena or call a witness.
- Testimony and evidence shall be heard and admitted into the record as determined by the chair of the commission, whose decision may be overruled by a majority vote of the commission.
- Upon a majority vote of the commission, additional witnesses may be called and additional subpoenas may be issued for witnesses or documents, either upon request by a party or upon the commission's own recommendation.
- The commission may exclude parties, counsel for the parties, and staff from commission discussions, by a majority vote of the commission, for the purposes of:
  - discussing procedural, legal, or evidentiary issues; or
  - deliberations on findings to be made or actions to be taken by the commission.
- The commission should adopt and follow rules of judicial procedure and the Utah Rules of Evidence, to the extent that the rules are compatible with the ethics complaint process.
- The commission chair shall rule on evidentiary and procedural matters and may be overruled by a majority vote of the commission.
- Outline of basic procedure for hearing:
  - Complainant's opening argument (complainant or counsel)
  - Presentation of testimony and witnesses in support of complaint
    - Sworn testimony with right to cross examine (by respondent or counsel)
  - Respondent may bring a motions to dismiss the complaint and Complainant may bring a motion for a directed verdict
  - Respondent's opening argument (respondent or counsel)
  - Presentation of testimony and witnesses refuting complaint
    - Sworn testimony with right to cross examine (by complainant or counsel)
  - Complainant's closing argument (complainant or counsel)
  - Respondent's closing argument (complainant or counsel)
  - Deliberation by commission or commission takes under advisement
- The hearing may be suspended for a specified time period by a majority vote of the commission in order to accommodate the gathering of evidence, the attendance of witnesses, the attendance of commission members, or any other matter considered necessary by the commission.
- The commission shall determine, by a vote of at least four of the five commission members, whether each individual allegation is worthy of review by the House or Senate Ethics Committee.
- The decision shall be based on a clear and convincing evidentiary standard.
- No decision on a hearing on a complaint shall be released by the Independent Ethics Commission within the 90 day period before a regular primary election or a regular general election in which the accused legislator is a candidate.
- If no allegations are recommended for review by the ethic committee, the finding shall state that:

- the complaint has been dismissed because no allegations were recommended for review by the ethics committee; and
- the complaint, response, and all documents, testimony, and information relating to the complaint and its review by the Independent Ethics Commission are non-public documents and private records not for public release by any person.
- If one or more of the allegations in the complaint is recommended for review by the commission, the commission shall issue a written finding and order on the complaint which shall:
  - list the names of each complainant;
  - list the name of the respondent;
  - state the date of the finding and order;
  - for each allegation that is found to be worthy of review by the ethics commission:
    - provide a reference to the code of conduct or criminal provision allegedly violated;
    - state the names and number of commission members voting in favor of recommending review of the allegation and the names and number of those voting in opposition;
    - optionally include a statement by those members voting in favor of recommending review that states the reasons for recommending review of the allegation (provided that the statement does not cite specific evidence, testimony, or witnesses); and
    - optionally include a statement by those members voting against recommending review that states the reasons for opposing review of the allegation (provided that the statement does not cite specific evidence, testimony, or witnesses);
  - provide any general statement adopted for inclusion in the finding by a majority vote of the commission;
  - state that the finding and order, complaint, and the response are to be publicly released (subject to the exclusion of any dismissed allegations);
  - contain a statement referring the allegations to the House or Senate Ethics Committee, as applicable, for review;
  - state the names of each member of the commission; and
  - be signed by each commission member.
- All other documents, testimony, and other information from the hearing shall remain private.
- Only those allegations found to be worthy of review by the Independent Ethics Commission shall be reviewed by the Ethics Committee.
- The commission's finding shall:
  - be provided in writing to:
    - the respondent and to the first named complainant if any allegations in the complaint are recommended for review; or
    - to the respondent and to the first named complainant in a form and manner approved by a majority of the commission if no allegations are recommended for review.

## **Adjudication by Ethics Committee**

### **Procedures -- Scheduling of Hearing**

- If an Independent Ethics Commission recommends that an allegation in an ethics complaint be reviewed, a copy of the commission's finding and order, the complaint, and the response shall be provided to the chair and vice-chair of the ethics committee for that house of the Legislature within five business days of the date of issuing the finding and order.
  - The complaint, response, and findings are public documents at this point in the proceedings. Portions of the complaint and response that address dismissed allegations shall be removed before the public release of the document.
  - All other documents, testimony, proceedings, and records from the independent ethics commission remain private.
- Within five business days of the date of issuance of the findings, the chair and vice-chair of the Ethics Committee shall schedule a hearing to review the complaint, which hearing shall be held within 30 days of the date of the issuance of the findings and order.
- The complaint and response may not be amended, but the Complainant and Respondent are permitted to file an amended list of requested witnesses within 10 days of the date of issuance of the Independent Ethics Commission's findings and order.
- No new allegations may be added to a complaint. If a new allegation exists, an additional complaint containing the new allegation must be filed and reviewed by the independent ethics commission.

### **Hearing on the Complaint before the Ethics Committee -- Procedures**

- The hearing shall be a public meeting, subject to the requirements of the Open and Public Meetings Act.
- The committee shall record the hearing, but no third party shall be permitted to make a video or audio recording of the hearing.
- The hearing may be closed, by a majority vote of the committee, for the purposes of:
  - discussing procedural, legal, or evidentiary issues; or
  - deliberations on findings to be made or actions to be taken by the committee.
- Except as specifically provided in this section, procedures for conducting the hearing shall be the same as with the Independent Ethics Commission.
  - The chair of the ethics committee shall take the same role as the chair of the independent ethics commission.
- After completing the testimony phase of the hearing, the committee shall conduct deliberations in a closed meeting and then publicly vote on the allegations in a public meeting.
- The committee shall determine, by a majority vote, whether each allegation has been proved by a clear and convincing evidentiary standard.
- A committee may, by a majority vote, issue private letters of reprimand and/or advice and guidance to a legislator.
- The committee shall prepare a finding that shall:
  - list the names of each complainant;

- list the name of the respondent;
- state the date of the finding;
- if no allegations were found to have been proved, recommend that the ethics complaint be dismissed because no counts were proved;
- for each allegation that is found to have been proved, provide:
  - a reference to the code of conduct or criminal provision associated with the allegation;
  - the names and number of committee members voting that the allegation was proved and the names and number of committee members voting in opposition;
  - a recommendation that:
    - the legislator not be disciplined for the violation;
    - the legislator be censured for the violation, including whether the respondent should be denied any legislative right, power, or privilege, and provide recommendations for the type or types of censure the committee believes to be appropriate; or
    - the legislator be expelled from the Legislature;
  - any reasons for the recommendation that are approved for inclusion by a majority vote of the committee;
- direct that the finding be delivered to:
  - the President of the Senate and the Senate Minority Leader, for the Senate Ethics Committee; or
  - to the Speaker of the House and the House Minority Leader, for the House Ethics Committee;
- contain any statements adopted for inclusion in the finding by a majority vote of the committee;
- state the names of each member of the committee; and
- contain the signatures of each member of the committee.
- A written copy of the finding shall be delivered to:
  - the President or the Speaker, as indicated in the finding;
  - the first named complainant; and
  - the respondent.

### **Actions on the Finding by the Senate or House**

The Senate or House shall consider the recommendations under existing procedures (Joint Rule 6, Chapter 5 -- Action by Senate or House on Ethics Committee Recommendation)